

Scr. No. 09/744,514  
Response to Office Action of 30 December 2003  
Atty Docket 117040-18

## REMARKS

### Specification

The Examiner has not commented on the amendments to the specification made in the prior Office Action response, so it is assumed that they have been entered without objection.

### Drawings

The Examiner has not commented on the prior objections to the drawings, which were corrected by amendments to the specification. It is assumed that they have been entered without objection.

### Claims and amendments

Claims 1-23 were pending at the time of the Office Action. In the prior Office Action, the Examiner had indicated claims 6-11, 15-19, and 21-22 to be allowable if in independent form. The present Office Action indicates that claims 5-11, 14-19 and 21 would be allowable if in independent form.

Independent claims 1 and 23 are amended above, in an effort to distinguish the Examiner's prior art citation and to overcome the Section 112 rejection of claim 1.

### Section 102 rejections

A rejection previously made by the Examiner based upon Biedermann, US Pat. No. 6,168,597 ("Biedermann '597"), has been withdrawn by the Examiner.

A new novelty rejection is made by the Examiner, based upon "Jackson in United States Patent No. 6,045,579" on page 3 of the Office Action. The correct patent number for "Jackson" is US Patent No. 6,443,989, and applicant will refer to the patent as "Jackson '989." It is the Jackson '989 patent, cited in the listing of references cited in the 27 May 2003 Office Action, which the undersigned attorney understands to be the present basis for rejection. The Examiner is reminded of the telephone conference initiated by the undersigned attorney in early January to discuss this error in the patent number cited in the Office Action.

With regard to claim 1, the applicant has amended the claim to limit it to a device wherein the fixing body is adapted to be spread open "over its entire length" rather than "substantially over its entire length." This distinguishes Jackson '989, which is not capable of being spread open at the posterior or rear wall 17, as is clear from the drawings. Claim 23 is similarly amended above.

Further with regard to claim 1 as amended, it is now claimed that the fixing body can be spread open transversely with respect to its longitudinal direction by a wedge action "at

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least at its two ends in longitudinal direction" for connection to the respective bone fragment by proximal introduction of the spreading body into the cavity, rather than able to be spread open transversely with respect to its longitudinal direction by a wedge action "at least in the region of its two ends" for connection to the respective bone fragment by proximal introduction of the spreading body into the cavity. Jackson '989 does not teach a fixing body that can be spread open transversely at its two longitudinal ends, because posterior end 17 is not capable of being spread open.

Independent claim 23 is allowable for the same reasons as claim 1, provided above.

#### **Section 103 rejection**

The Examiner has rejected claim 23 as being obvious over Jackson '989. The Examiner indicates that Jackson '989 does not explicitly teach the use of the device taught therein for repair of an ankle fracture, but states that the Jackson '989 device, if properly sized, would have such utility. Applicant does not disagree with this analysis, but notes that, regardless of size or intended purpose, the fixing body of Jackson '989 is unable to be spread open "over its entire length" rather than "substantially over its entire length." For that reason, claim 23 is now also allowable.

#### **Allowable subject matter**

Although the Examiner has indicated that claims 5-11, 14-19, 21 and 22 would be allowable if in independent form, applicant respectfully declines to put any of these claims into such independent form, since all are considered allowable as proper dependent claims from claim as amended.

Respectfully submitted,

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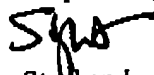
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